

WETLANDS COUNCIL

MINUTES

February 10, 2004

The Wetlands Council met on Tuesday, February 10, 2004 at the Department of Environmental Services, 29 Hazen Dr., Concord, NH

Attendees:

Council Members: Brian K. Fowler, Chairman; Thomas G. Chrisenton, John S. Cobb, William M. Dannehy, Camilla Lockwood, Lawrence E. Morse and Glenn Normandeau

Designees: Sharon Champagne, Ted Diers, William Ingham Jr., E. William Roy, Thomas Sloan, and John St.C White

Absentees: None


The meeting was called to order by Chairman Brian Fowler at 9:00 a.m.

1. Approval of Minutes of January 13, 2004 Meeting

A motion was made by Mr. Cobb and seconded by Mr. Ingham to accept the minutes of January 13, 2004 as presented. It was unanimously voted.

2. Status of Appeals

Michael Sclafani, Appeals Clerk, distributed a report and reviewed the status of appeals with the Council members.

- Docket No. 02-13 WtC – John P. and Carole Hoag et al: WB #2002-00348
An appeal has been filed with the Carroll County Superior Court.
- Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019
A stay remains in effect on this appeal. Mr. Sclafani indicated that the Department is in the process of bringing an enforcement action, which uld likely result in the appeal being withdrawn. Further information is expected by the Council's next meeting.
- Docket No. 03-02 WtC – Philip and Judith Mills: WB #2002-00922
A pre-hearing conference was scheduled for February 24, 2004. The state filed an Assented-to Motion to Continue the Pre-hearing Conference and the motion was granted. A new pre-hearing date will be scheduled.
- Docket No. 03-03 WtC – Joseph J. Smith: WB #2001-00787
An appeal has been filed with the Rockingham County Superior Court. It is unclear what relief is being sought as all parties agreed to a dismissal of the appeal at the December 22, 2003 pre-hearing conference.

- Docket No. 03-04 WtC - Aqua Terrace Condominium Assn: WB #2002-00866
Deliberations are scheduled for today.
- Docket No. 03-08 WtC - Marianna and Gene Cayten: WB #2002-01912
Deliberations are scheduled for today.
- Docket No. 03-11 WtC – Town of Barrington – Application of USA Springs for a Large Groundwater Withdrawal Permit
A stay remains in effect on this appeal.
- Docket No. 03-13 WtC – Town of Salem Conservation Commission: WB #2002-02397
An appeal hearing is scheduled for today at 10:00 a.m.
- Docket No. 03-16 WtC - Herbert and Joan Sauve
An appeal of the Council's decision to summarily dismiss this case due to untimely filing has been brought before the Carroll County Superior Court.
- Docket No. 03-17 WtC - Roy & Myra Gordon Appeal
A pre-hearing conference is scheduled for March 9, 2004 at 1:00 p.m.
- Docket No. 03-18 WtC - Conservation Law Foundation Appeal
A written Decision & Order was issued on January 28, 2004 denying appellant's Motion for Reconsideration of the Council's decision to summarily dismiss the appeal.
- Docket No. 03-21 WtC - Appeal by Lee Maserian
A pre-hearing conference is scheduled for March 9, 2004 at 10:00 a.m.
- Docket No. NAH 04-01 - Paul Goodwin and Allen Folsom
On January 26, 2004 a request for a non-adjudicatory public hearing was filed by Paul Goodwin and Allen Folsom on DES's Administrative Policy with regard to classification and permitting of seasonal canopies.

9:12 a.m. The Wetlands Council meeting recessed to allow the councilors an opportunity to review documents filed in Docket No. NAH 04-01

9:17 a.m. The Wetlands Council meeting reconvened.

A brief discussion of the issues raised by Mr. Goodwin and Mr. Folsom in their Appeal of Administrative Policy ensued.

9:20 a.m. John St.C. White arrived.

Ms. Champagne made a motion to accept Docket No. NAH 04-01. Ms. Lockwood seconded the motion and it was unanimously voted.

3. Wetlands Bureau Update

Collis Adams, Wetlands Bureau Administrator, reviewed proposed changes to Rule 402.19, which seeks to conform the Bureau's rules to a recent change in Governor & Council policy eliminating the requirement for fee simple ownership of property in order to build waterfront structures. Mr. Adams advised that a public hearing was held the first week of February and no one appeared.

Councilor Morse made a motion to endorse the proposed change to Rule 402.19 as presented. Councilor Normandeau seconded the motion and it was unanimously voted.

Mr. Adams distributed copies of the revised proposed mitigation rules which incorporate comments of various stakeholder groups. Mr. Adams stated that the proposed rules will be heard by JLCAR on February 20, 2004. The Bureau's next major effort will be to establish a mitigation fee program. The Bureau is in the process of developing a work group to address major issues involved in the program, *i.e.*, how will fees be established, who will hold the funds, who will determine when the funds are released, and which projects will be funded.

After discussion the following vote was taken:

Councilor Morse made a motion to endorse the mitigation rules with a modification to specifically state that agricultural and forestry activities are exempt from the rules. Councilor Diers seconded the motion and it was unanimously voted.

4. Other Business

Chairman Fowler suggested that a subcommittee be formed to review the Wetlands Council rules. The current rules were established by the Attorney General's Office at the time the Council was formed in 1996. The goal would be streamline and clarify procedural issues and, where possible, standardize the Wetlands Council rules to those of other councils. Mr. Sclafani noted that there is also a conflict between the council rules and the statutes with regard to review by the Council of administrative actions taken by the Department.

Mr. Sclafani distributed copies of the recently revised Waste Management rules which were developed through a collaborative effort to standardize council rules by the Attorney General's Office, DES legal department, and representatives of the Air Resources Council, Water Council and Waste Management Council.

Councilor Diers discussed HB 516, which could impact the Wetlands Council and its scope of review of proposed projects. In developing rules changes, this bill should be tracked as it progresses through the legislative process.

The committee will be comprised of Chairman Fowler; Councilors Morse, Diers and Normandeau; and Michael Sclafani, Appeals Clerk.

Chairman Fowler asked the Councilors to review the current rules and the Waste Management Council rules for discussion at the next Council meeting.

5. **Next Meeting**

Subsequent to deliberations, a meeting date of February 24, 2004 was set.

6. **Adjournment**

Councilor Normandeau made a motion to adjourn. Councilor Lockwood seconded the motion, and it was unanimously voted.

The meeting adjourned at approximately 10:00 a.m.